

NOT FOR PUBLICATION

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

JOHN D. HORTON,

Plaintiff,

V.

MARIA T. COSME, CITY OF TRENTON, :

Defendants.

Civ. No. 06-6114 (GEB)

MEMORANDUM OPINION

BROWN, Chief Judge

This matter comes before the Court upon the motion of pro se plaintiff John D. Horton (“Plaintiff”) for default judgment. The Court has considered the parties’ submissions and decided the matter without oral argument pursuant to Federal Rule of Civil Procedure 78. For the reasons set forth below, this Court will deny the motion for default judgment.

I. DISCUSSION

On December 20, 2006, Plaintiff filed a Complaint with an application to proceed without payment of fees against defendants Maria T. Cosme and the City of Trenton (“Defendants”). On April 25, 2007, the Court granted Plaintiff’s application to proceed without payment of fees. Plaintiff moved for default judgment on August 29, 2007. The Court denied this motion on September 19, 2007, because Plaintiff never served Defendants and had not requested service by the Marshal. On October 10, 2007, Plaintiff requested service by the Marshal and on October 19, 2007, the Court ordered the Marshal to effectuate service on Defendants no later than November 30, 2007. On December 12, 2007, Horton filed the present motion for default judgment.

In his motion, Plaintiff argues that default judgment should be entered because twenty days have passed since his summons and complaint were served and Defendants have not appeared, answered or otherwise responded. Pursuant to Federal Rule of Civil Procedure 12(a)(1)(A), defendants must file an answer within 20 days after being served with the summons and complaint. Defendants argue in a letter dated December 20, 2007, that they were “not served with a copy of Plaintiff’s Complaint by a U.S. Marshal until earlier this week.” Accordingly, Defendants argue that Plaintiff’s motion should be denied. Plaintiff has not filed a reply brief.

On December 28, 2007 Defendants returned the executed summonses. The executed summonses, as certified by the Marshals, indicate that the Marshals served Defendants on December 17, 2007. Defendants timely filed an answer on January 7, 2008. Therefore, the Court denies Plaintiff’s motion for default judgment.

II. CONCLUSION

For the foregoing reasons, Plaintiff’s motion for default judgment is denied.

Dated: February 21, 2007

s/ Garrett E. Brown, Jr.
GARRETT E. BROWN, JR., U.S.D.J.